TETON ENERGY CO., INC.

IBLA 81-528 Decided December 31, 1981

Appeal from decision of Acting Chief, Conservation Division, Geological Survey, affirming denial of application for suspension of operations and production for noncompetitive oil and gas leases. C-10314 through C-10317 and C-10657.

Affirmed.

1. Oil and Gas Leases: Suspensions--Oil and Gas Leases: Termination

A nonproducing oil and gas lease expires and may not be retroactively suspended when there is no suspension application pending at the time of the expiration.

APPEARANCES: Raymond J. Gengler, Esq., Denver, Colorado, for the appellant; John H. Kelly, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Teton Energy Co., Inc., has appealed from a decision of the Acting Chief, Conservation Division, Geological Survey (Survey), dated February 20, 1981, affirming a letter decision by the Conservation Manager, Central Region, Survey, dated July 10, 1980, denying appellant's May 13, 1980, application for suspension of operations and production for noncompetitive oil and gas leases, C-10314 through C-10317 and C-10657. 1/

1/ Actually, appellant's May 13, 1980, application referred only to leases C-10314 through C-10317. The record indicates that Champlin Petroleum Company (Champlin) is the lessee of C-10657 and that appellant has no interest in that lease. Champlin filed a request for suspension on May 21, 1980. The July 10, 1980, Survey decision denying the suspension referenced all five leases, as did the Feb. 20, 1981, Survey affirmance. Champlin has appealed neither the July 10, 1980, nor the Feb. 20, 1981, Survey decisions. Since Champlin was the appropriate party to file an appeal concerning C-10657, and none was filed, the Survey decision of Feb. 20 is final.

Appellant's four oil and gas leases in question were issued pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976), for a term of 10 years and so long thereafter "as oil or gas is produced in paying quantities." 30 U.S.C. § 226(e) (1976). The expiration date of the leases was April 30, 1980.

On April 22, 1980, appellant's leases were committed to the DeBeque Unit pursuant to an approved unit agreement. On April 24, 1980, Cities Service Company (Citco) submitted a letter to Survey stating:

> The captioned well [Federal 16-1, Lease No. C-14336] is the initial unit obligation well for the Debeque Unit for which an Application to Drill has been submitted. Several leases within this proposed unit were to expire April 30, 1980, unless the initial unit well was drilling.
>
> Several efforts have been made to meet with the surface owner to obtain a rehabilitation agreement and to gain access to drill the well. The location chosen is now being used as a lambing pasture and the landowner has refused Teton Energy Co., Inc. access to this area until lambing season is over, i.e., at least June 1, 1980.
> * * *
>
> It is requested that lease expiration and operations be suspended until such time as access to the location is secured and the Application to Drill is approved.

By letter dated May 13, 1980, Survey denied Citco's request stating:

> On April 28, 1980, with the exception that a private surface owner rehabilitation agreement was not furnished, an otherwise acceptable application for permit to drill (APD) on lease C-14336 was received in this office. This application was a resubmittal of one deemed inadequate for other reasons and was originally submitted on April 7, 1980. Federal lease C-14336 underlies privately owned surface and is fully committed to the DeBeque Unit. It is the intention of the unit operator to make this location the initial obligation well for the DeBeque Unit. Apparently there are some problems which need to be worked out with the private surface owner.
>
> On April 24, 1980 this office received a letter from you which requested a suspension of lease expirations and operations until such time as access to the location is secured and the APD is approved. According to our records, Cities Service Company is lessee of record of six leases which are fully committed to the DeBeque Unit and are as follows together with their respective expiration dates:

C-12731	May 31, 1981	C-12854	May 31, 1981
C-2947	November 21, 1981	C-29475	November 21, 1981
C-29476	November 21, 1981		

* * * * * * *

> Although there are five leases with an expiration date of April 30, 1980, which are fully committed to the DeBeque Unit, no requests for suspension of operations and production were received from the respective lessees of record prior to lease expiration and this office is of the opinion that they have expired.
>
> In view of the foregoing, this office denies your request for a suspension of lease expiration and operations within the DeBeque Unit for the reason that adequate time remains in the lease term to process an APD to the point that drilling operations may be accomplished prior to any of your leases expiring.

On May 14, 1980, Survey received a letter from appellant dated May 13, 1980, requesting a suspension of operations and production for leases C-10314 through C-10317. Appellant indicated that it intended its letter to be a "replacement" for the Citco letter and that it had originally believed that Citco's request for suspension "on that lease [C-14336] would cause all lease expirations in the DeBeque Unit to be suspended."

A noncompetitive oil and gas lease normally expires at the end of its primary term in the absence of either production or diligent drilling operations. 30 U.S.C. § 226(e) (1976). A lease which might otherwise terminate can be preserved by suspension. 30 U.S.C. § 226(f) (1976). The Secretary is authorized by statute to suspend oil and gas leases. 30 U.S.C. § 209 (1976). However, no suspension of an oil and gas lease will be granted in the absence of a well capable of production, "except where the Director, Geological Survey, directs or assents to a suspension in the interest of conservation." 43 CFR 3103.3-8(a). 2/ Such relief "may also be obtained for any oil and gas leases included within an approved unit or cooperative plan of development and operation." 43 CFR 3103.3-8(f). In this case there was no well capable of production, therefore, suspension could only be authorized by the Director, Survey, in the interest of conservation.

[1] It is well settled that if a written application is not properly filed prior to the expiration date of the lease, the lease terminates. Coronado Oil Co., 52 IBLA 308 (1981); Tenneco Oil Co.,

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2/ Prior to the Mar. 20, 1980, amendment of 43 CFR 3103.3-8(a) (45 FR 18375) authorizing the Director, Survey, to suspend a lease on which there is no well capable of production, such action could only be taken by Departmental officers at the Secretarial level. See American Resources Management Corp., 40 IBLA 195, 198 (1979).

44 IBLA 171 (1979); American Resources Management Corp., supra. However, even where the expiration date has passed, an oil and gas lease may be retroactively suspended if a suspension application is properly filed before the lease terminates. Jones-O'Brien, Inc., 85 I.D. 89 (1978).

In its February 20, 1981, decision, Survey held that the April 23, 1980, request by Citco for a suspension was not applicable to the subject leases because Citco "is not a lessee of record for the five leases involved." Survey also pointed out that appellant was the unit operator. Since the only application for a suspension of the leases in question was filed on May 14, 1980, well after the expiration date, Survey concluded that the application was properly denied. We agree.

In Jones-O'Brien, Inc., supra at 94-95, the Acting Secretary stated that "[a]n application filed before the lease expires, can be viewed as preserving the right of the Department to act on the application. If a suspension application is not filed prior to the lease expiration, the lease ends totally and there is nothing in existence for the Department to suspend." Clearly, Survey was precluded from consideration of appellant's application received on May 14, 1980, because the leases in question expired at midnight on April 30, 1980, by operation of law. The only question presented is whether the letter filed by Citco on April 23, 1980, could be considered an application on behalf of appellant's leases. Survey did not consider it to be. In its letter to Survey dated May 13, 1980, appellant characterized the April 23, 1980, Citco letter as "requesting the suspension on that lease." "That lease" was Citco's C-14336. However, appellant believed that Citco's request for suspension on C-14336 "would cause all lease expirations in the DeBeque Unit to be suspended."

Unfortunately, the suspension regulations contemplate that an application for suspension of operations and production be made by the lessee of record for the applicable lease. See 43 CFR 3103.3-8. This requirement is for the protection of both the lessee and Survey. One lessee should not be able to request suspension of the lease of another without the other's specific authorization. Likewise, Survey should not be able to suspend operations and production on a lease without having received a proper application. As stated by the Acting Chief, Conservation Division, in his February 20, 1981, decision at page 3: "Citco is not a lessee of record for the five leases involved in this appeal. Since the April 23, 1980, application for an SOP was signed by Citco alone, it could not be treated as an application covering any of such five leases."

In addition, appellant's letter which was received by Survey on May 14, 1980, could not be considered as relating back and amending or replacing Citco's April 23 letter because Survey had denied Citco's application on May 13, 1980.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge